



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200735029

Uniform Issue List: 402.00-00

JUN - 7 2007

T:EP:RA

Legend:

Taxpayer A =

Individual C =

Company W =

Company X =

Company Y =

Plan X =

IRA X:

Account Y:

Amount 1:

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5:

Calendar Year 1:

Dear :

This is in response to your letter dated , as supplemented by correspondence dated , in which your authorized representative on your behalf requests a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code (the Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, whose date of birth was Date 1, 1934, had been an employee of Company W for a number of years. Company W sponsors Plan X, which, it is represented, is qualified within the meaning of section 401(a) of the Code.

During Calendar Year 1, Company W "forced" Taxpayer A to retire because of poor health. As a result of his retirement, Taxpayer A was entitled to receive a distribution from Plan X in an amount of Amount 1. On or about Date 3, 2002, Taxpayer A signed a "Direct Deposit Authorization" ("Form") requesting that Amount 1 be directly deposited into his individual retirement account, IRA X, maintained with Company Y. Said Form was countersigned on or about Date 5, 2002, by a representative of Company Y but the counter-signed portion of the Form indicated that Amount 1 was to be transferred to Account Y, a non-IRA account. Taxpayer A did not correct this error prior to Amount 1's being distributed from Plan X. On or about Date 4, 2002, Company X, the administrator of Plan X, transferred Amount 1 from Plan X to Account Y. Taxpayer A did not question this transfer.

Between calendar year and calendar year Taxpayer A withdrew amounts approximating Amount 1 from his Account Y. Taxpayer A died on Date 2, 2005. At his death, Taxpayer A's Account Y held funds in an amount approximating the amount it held prior to the Date 4, 2002 transfer from Plan X to Account Y referenced above.

The documentation which accompanied this ruling request indicates that, prior to his death, Taxpayer A had taken no action intended to correct Company X's erroneous Date 4, 2002, transfer referenced above.

This ruling request was submitted by Individual C, the personal representative of the estate of Taxpayer A. Based on representations made with respect to this ruling request, calendar year remains an "open" tax year.

Based on the facts and representations, you request:

- (1) That the Service waive the 60-day rollover requirement with respect to the distribution Taxpayer A received during calendar year from Plan X because the failure to waive such requirement would be a hardship and against equity or good conscience;
- (2) That Individual C, the personal representative of the estate of Taxpayer A, be granted a period a time not to exceed 60 days as measured from the date of this ruling letter to roll over an amount not to exceed Amount 1 into an IRA set up and maintained in the name of Taxpayer A; and
- (3) That the amounts distributed from Plan X to Taxpayer A and transferred to Account Y during calendar year be treated as if they had been distributed to Taxpayer A during calendar years in accordance with the level of distributions received by Taxpayer A from his Account Y during said years.

With respect to your ruling requests, section 402(a)(1) of the Code provides that, except as otherwise provided in section 402, any amount distributed out of an employees' trust described in section 401(a) that is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, in the manner provided under section 72 of the Code (relating to annuities).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans including IRAs.

Code section 402(c)(3)(A) provides that, except as provided in subparagraph (B), paragraph (1) (which excludes rolled over amounts from gross income) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Code section 402(c)(6)(A) provides that the transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

Code section 402(c)(6)(B) provides that the excess of the fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

Code section 402(c)(6)(D) provides that no gain or loss shall be recognized on any sale described in subparagraph (A) to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (1).

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement

under section 402(c)(3)(A) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9).

Section 401(a)(31)(A) of the Code provides that a trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution-

- (i) elects to have such distribution paid directly to an eligible retirement plan, and
- (ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe), such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

Section 401(a)(31)(E) of the Code provides that, for purposes of Code section 401 (a)(31), the term "eligible retirement plan" has the meaning given such term by section 402(c)(8)(B) with an exception not pertinent to this ruling request. Thus, a direct transfer defined in Code section 401(a)(31), may be made into an IRA.

Section 1.402(c)-2 of the Income Tax Regulations, Question and Answer-1, provides, in relevant part, that "...a rollover is either a direct rollover as described in section 1.401(a)(31)-1, Q&A-3, or a contribution of an eligible rollover distribution to an eligible retirement plan that satisfies the time period requirement in section 402(c)(3) and Q&A-11 of this section and the designation requirement described in Q&A-13 of this section."

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-5, provides, in relevant part, that a direct rollover described in Code section 401(a)(31) is a distribution and rollover of the eligible rollover distribution and not a transfer of assets and liabilities. Thus, for example, the consent and requirements of Code sections 401(a)(11), 411(a)(11), and 417 apply to transactions described in Code section 401(a)(31).

As a result of Company Y's error in designating a non-IRA account to receive Taxpayer A's Plan X distribution, no direct rollover within the meaning of Code section 401(a)(31) and the regulations promulgated thereunder occurred. As a result, Taxpayer A's calendar year Plan X distribution was subject to the rollover rules of Code section 402(c) and the regulations promulgated thereunder including the requirement that the rollover be accomplished within 60 days of the date the distribution is received by the distributee.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3)(B), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Taxpayer C, the personal representative of the estate of Taxpayer A, submits that Taxpayer A's failure to accomplish a timely rollover was the result of a bookkeeping error on the part of Company Y which was not corrected by Taxpayer A prior to his death because of age-related physical and mental defects. However, in this case, we note that Taxpayer A lived for over 3 ½ years as measured from the date of the transfer from Plan X to Account Y without taking corrective action although the Form referenced above clearly noted that Company Y misunderstood Taxpayer A's instructions regarding Taxpayer A's intentions with respect to the calendar year Plan X distribution. Furthermore, in addition to taking no action with respect to the erroneous distribution and transfer, Taxpayer A used the transferred funds to satisfy financial obligations to the extent that, as of his death, none of said funds remained which could have been transferred to an IRA.

Thus, with respect to your first and second ruling requests

- (1) The Service hereby declines to waive the 60-day rollover period found in Code section 402(c)(3)(A) with respect to Taxpayer A's calendar year Plan X distribution; and
- (2) That Individual C, the personal representative of Taxpayer A's estate, is not granted any period of time to contribute Amount 1, distributed in calendar year from Plan X, or any portion thereof, into an IRA set up and maintained in the name of Taxpayer A.

With respect to your third ruling request, as noted above, Taxpayer A received a distribution of Amount 1 in calendar year which, absent a valid rollover, was taxable to him under section 402(a) in the year of receipt. The Service does not have the authority to treat amounts actually distributed during calendar year from Plan X to Taxpayer A and taxable to him in calendar year as being distributed to him over a period of years as requested.

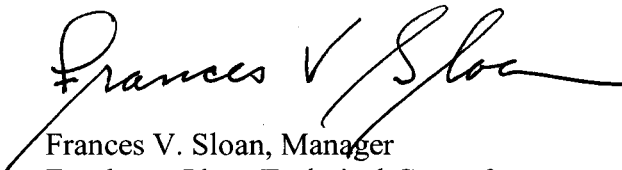
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with the Service, the original of this letter ruling is being sent to you and a copy to your authorized representative.

If you wish to inquire about this ruling, please contact _____ (I.D. #
) , at () Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice of Intention to Disclose